

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 93

Introduced by Hansen, 26; Ebke, 32.

Read first time January 05, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to law enforcement; to adopt the Automatic
- 2 License Plate Reader Privacy Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and may be
2 cited as the Automatic License Plate Reader Privacy Act.

3 Sec. 2. For purposes of the Automatic License Plate Reader Privacy
4 Act:

5 (1) Alert means data held by the Department of Motor Vehicles, each
6 criminal justice information system maintained in this state, the Federal
7 Bureau of Investigation National Crime Information Center, the Federal
8 Bureau of Investigation Kidnappings and Missing Persons list, the Missing
9 Persons Information Clearinghouse established under section 29-214.01,
10 and license plate numbers that have been manually entered into the
11 automatic license plate reader system upon a law enforcement officer's
12 determination that the vehicles or individuals associated with the
13 license plate numbers are relevant and material to an ongoing criminal or
14 missing persons investigation;

15 (2) Automatic license plate reader system means one or more mobile
16 or fixed automated high-speed cameras used in combination with computer
17 algorithms to convert images of license plates into computer readable
18 data;

19 (3) Captured plate data means global positioning system coordinates,
20 date and time information, photographs, license plate numbers, and any
21 other data captured by or derived from any automatic license plate reader
22 system;

23 (4) Governmental entity means a department or agency of the state or
24 a political subdivision thereof, or an individual acting for or on behalf
25 of the state or a political subdivision thereof; and

26 (5) Secured area means a place, enclosed by clear boundaries, to
27 which access is limited and not open to the public and entry is only
28 obtainable through specific access-control points.

29 Sec. 3. (1) Except as otherwise provided in this section or in
30 section 4 of this act, the use of an automatic license plate reader
31 system by any person acting under color of state law is prohibited.

1 (2) An automatic license plate reader system may be used by a person
2 acting under color of state law when such use is:

3 (a) By a state, county, city, or village law enforcement agency as
4 an alert for the purpose of identifying:

5 (i) Outstanding parking or traffic violations;

6 (ii) An unregistered or uninsured vehicle;

7 (iii) A vehicle in violation of the vehicle equipment requirements
8 set forth under the Nebraska Rules of the Road;

9 (iv) A vehicle in violation of any other vehicle registration
10 requirement;

11 (v) A vehicle registered to an individual for whom there is an
12 outstanding warrant;

13 (vi) A vehicle associated with a missing person;

14 (vii) A vehicle that has been reported as stolen; or

15 (viii) A vehicle that is relevant and material to an ongoing
16 criminal investigation;

17 (b) By a parking enforcement entity for regulating the use of a
18 parking facility;

19 (c) For the purpose of controlling access to a secured area;

20 (d) For the purpose of electronic toll collection; or

21 (e) To assist weighing stations in performing their duties under
22 section 60-1301.

23 Sec. 4. (1) Except as otherwise provided in this section, the use
24 or sharing of captured plate data obtained for the purposes described in
25 subsection (2) of section 3 of this act is prohibited. Captured plate
26 data obtained for the purposes described in subsection (2) of section 3
27 of this act may be retained:

28 (a) As evidence under subsection (2) of section 3 of this act;

29 (b) Pursuant to a preservation request under subsection (1) of
30 section 5 of this act;

31 (c) Pursuant to a disclosure order under subsection (2) of section 5

1 of this act;

2 (d) Pursuant to a warrant issued under the Federal Rules of Criminal
3 Procedure or sections 29-401 to 29-411; or

4 (e) As part of an ongoing investigation if the captured plate data
5 is confirmed as matching an alert and is destroyed at the conclusion of
6 either:

7 (i) An investigation that does not result in any criminal charges
8 being filed; or

9 (ii) Any criminal action undertaken in the matter involving the
10 captured plate data.

11 (2) Any governmental entity that uses automatic license plate reader
12 systems pursuant to subsection (2) of section 3 of this act must update
13 those systems from the databases enumerated in such subsection at the
14 beginning of each law enforcement agency shift if such updates are
15 available.

16 (3) Any governmental entity that uses automatic license plate reader
17 systems pursuant to subsection (2) of section 3 of this act may manually
18 enter a license plate number into the automatic license plate reader
19 system only when a law enforcement officer determines that the vehicle or
20 individuals associated with the license plate number are relevant and
21 material to an ongoing criminal or missing persons investigation subject
22 to the following limitations:

23 (a) Any manual entry must document the reason for the entry; and

24 (b) Manual entries must be automatically purged at the end of each
25 law enforcement agency shift.

26 Sec. 5. (1)(a) An operator of an automatic license plate reader
27 system, upon the request of a governmental entity or a defendant in a
28 criminal case, shall take all necessary steps to preserve captured plate
29 data in its possession for fourteen days pending the issuance of a court
30 order under subsection (2) of this section.

31 (b) A requesting governmental entity or defendant in a criminal case

1 must specify in a written sworn statement:

2 (i) The particular camera or cameras for which captured plate data
3 must be preserved or the particular license plate for which captured
4 plate data must be preserved; and

5 (ii) The date or dates and timeframes for which captured plate data
6 must be preserved.

7 (2) A governmental entity or defendant in a criminal case may apply
8 for a court order for disclosure of captured plate data, which shall be
9 issued by the court if the governmental entity or defendant in a criminal
10 case offers specific and articulable facts showing there are reasonable
11 grounds to believe the captured plate data is relevant and material to an
12 ongoing criminal or missing persons investigation or criminal prosecution
13 or defense.

14 (3) Captured plate data held by a governmental entity shall be
15 destroyed if the application for an order under subsection (2) of this
16 section is denied or at the end of six months, whichever is later.

17 (4) A governmental entity may obtain, receive, or use privately held
18 captured plate data only pursuant to a warrant issued under the Federal
19 Rules of Criminal Procedure or sections 29-401 to 29-411 or the procedure
20 described in subsection (2) of this section, and only if the private
21 automatic license plate reader system retains captured plate data for
22 fourteen days or fewer.

23 Sec. 6. Except as otherwise provided in subdivision (3)(b) of this
24 section, any governmental entity that uses an automatic license plate
25 reader system shall:

26 (1) Adopt a policy governing use of the system and conspicuously
27 post the policy on the governmental entity's Internet web site or, if no
28 web site is available, in it's main governmental office;

29 (2) Adopt a privacy policy to ensure that captured plate data is not
30 shared in violation of the Automatic License Plate Reader Privacy Act or
31 any other law, and conspicuously post the privacy policy on the

1 governmental entity's Internet web site or, if no web site is available,
2 in its main governmental office; and

3 (3)(a) Report annually to the Nebraska Commission on Law Enforcement
4 and Criminal Justice on its automatic license plate reader practices and
5 usage. The report shall also be conspicuously posted on the governmental
6 entity's Internet web site or, if no web site is available, in its main
7 governmental office. The report shall include:

8 (i) The number of license plates scanned;

9 (ii) The names of the lists against which captured plate data was
10 checked, the number of confirmed matches, and the number of matches that
11 upon further investigation did not correlate to an alert;

12 (iii) The number of matches resulting in arrest and prosecution;

13 (iv) The number of preservation requests received under subsection
14 (1) of section 5 of this act;

15 (v) The number of preservation requests issued under subsection (1)
16 of section 5 of this act, broken down by the number of preservation
17 requests issued to other governmental entities and the number of
18 preservation requests issued to private automatic license plate reader
19 systems;

20 (vi) The number of disclosure orders received under subsection (2)
21 of section 5 of this act;

22 (vii) The number of disclosure orders applied for under subsection
23 (2) of section 5 of this act, broken down by:

24 (A) The number of applications for disclosure orders to governmental
25 entities under subsection (2) of section 5 of this act that were denied;

26 (B) The number of orders for disclosure to governmental entities
27 under subsection (2) of section 5 of this act resulting in arrest and
28 prosecution;

29 (C) The number of applications for disclosure orders to private
30 automatic license plate reader systems under subsection (2) of section 5
31 of this act that were denied; and

1 (D) The number of orders for disclosure to private automatic license
2 plate reader systems under subsection (2) of section 5 of this act
3 resulting in arrest and prosecution;

4 (viii) The number of manually-entered license plate numbers under
5 subsection (3) of section 4 of this act, broken down by reason justifying
6 the entry, the number of confirmed matches, and the number of matches
7 that upon further investigation did not correlate to an alert; and

8 (ix) Any changes in policy that affect privacy concerns.

9 (b) The reporting requirements of this subsection shall not apply to
10 weighing stations using an automatic license plate reader system pursuant
11 to subdivision (2)(e) of section 3 of this act.

12 Sec. 7. No captured plate data and no evidence derived therefrom
13 may be received in evidence in any trial, hearing, or other proceeding
14 before any court, grand jury, department, officer, agency, regulatory
15 body, legislative committee, or other authority of this state, or a
16 political subdivision thereof, if the disclosure of that information
17 would be in violation of the Automatic License Plate Reader Privacy Act.

18 Sec. 8. Any person who violates the Automatic License Plate Reader
19 Privacy Act shall be subject to legal action for damages. Such action may
20 be brought by any other person claiming that a violation of the act has
21 injured his or her business, his or her person, or his or her reputation.
22 A person so injured shall be entitled to actual damages, including mental
23 pain and suffering endured by him or her on account of violation of the
24 provisions of the act, and reasonable attorney's fees and costs of
25 litigation.

26 Sec. 9. (1) Captured plate data is not considered a public record
27 for the purposes of sections 84-712 to 84-712.09 and may only be
28 disclosed to the person to whom the vehicle is registered or with the
29 prior written consent of the person to whom the vehicle is registered.

30 (2) Upon the presentation to an appropriate governmental entity of a
31 valid, outstanding protection order pursuant to the Protection from

1 Domestic Abuse Act, the Uniform Interstate Enforcement of Domestic
2 Violence Protection Orders Act, or section 28-311.09 or 28-311.10
3 protecting the driver of a vehicle jointly registered with or registered
4 solely in the name of the individual against whom the order was issued,
5 captured plate data may not be disclosed except pursuant to a disclosure
6 order under subsection (2) of section 5 of this act or as the result of a
7 match pursuant to subsection (2) of section 3 of this act.